



Date Issued: July 29, 1998

Case No.: 97-INA-417

*In the Matter of:*

**Hillside Travel, Inc.**  
*Employer,*

*on behalf of*

**Ana M. Navarrete**  
*Alien.*

Appearances: Franklin S. Abrams  
Attorney At Law

Before: Burke, Guill and Vittone  
Administrative Law Judges

### **DECISION AND ORDER**

**PER CURIAM.** This case arises from an application for labor certification<sup>1</sup> for the position of Secretary for a travel agency. (AF 6 ).<sup>2</sup> This decision is based on the record upon which the Certifying Officer ("CO") denied certification and Employer's request for review, as contained in the AF. 20 C.F.R. § 656.27(c). Employer seeks to hire a bi-lingual Secretary for its travel agency.

The CO issued a Notice of Findings (NOF) proposing to deny the above-referenced application for failure to establish business necessity for the Spanish language requirement as required by § 656.21(b)(2). (AF 28-30). The CO instructed Employer that it may correct the deficiency in its application by (1) deleting the Spanish language requirement; or (2) submitting additional evidence that the foreign language requirement arises from a business necessity rather than Employer convenience. (AF 29). Employer was directed to include:

---

<sup>1</sup>Alien labor certification is governed by the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) and 20 C.F.R. Part 656.

<sup>2</sup>"AF" is an abbreviation for "Appeal File."

1. The total number of clients/people he deals with and the percentage of those people he deals with who cannot communicate in English.
2. How absence of the language would adversely impact business.
3. The percentage of time worker would use the language.
4. Describe how Employer has dealt with and handled Spanish-speaking clients previously or is currently handling this segment of his business & why he cannot continue to service these clients in the same manner.
5. Describe services provided by Employer to other ethnic groups and how the language problem is handled.
6. Any other documentation which will clearly show that fluency in Spanish is essential to employer's business.

Employer's rebuttal included a letter from Alice Tillem on Employer's letterhead, which discussed the demographics of Employer's surrounding areas and the growth of the Hispanic population therein. It described the success of one of its other offices in penetrating the Spanish population because it has Spanish-speaking staff. Further, Ms. Tillem explains that Employer cannot give the number of clients it has lost because of its inability to communicate in Spanish, but that it is a daily occurrence to receive a phone call from a person asking to speak with someone Spanish. Employer adds that business suffers because it cannot advertise to the Spanish community. (AF 34). Attached to this statement was demographic information, showing that there are six towns in its area where Hispanics make up more than 10% of the population, a listing of Hispanic owned Travel Agencies in its vicinity, and other agencies with Spanish-speaking employees. (AF 33). There is no indication of who Ms. Tillem is and in what her relationship is to Employer.

The CO determined that the rebuttal had not demonstrated that the language requirement is essential to the satisfactory performance of this position and denied the application. (AF 35). The CO reasoned that "the fact that the area where the business is located is experiencing an increase in its Hispanic population along with the fact that other travel agencies may employ Spanish-speaking personnel does not support a business necessity for the foreign language requirement." *Id.*

Administrative-judicial review was requested and the file was referred to the Board of Alien Labor Certification Appeals. Employer requests that the Final Determination (FD) be reversed.

### **DISCUSSION**

The sole issue here is whether Employer has established a business necessity for its foreign language requirement as required by 20 CFR § 656.21(b)(2)(i).

In advertising and recruiting for the job, § 656.21 (b)(2) requires in part that the job opportunity shall not include a requirement for a language other than English unless Employer

documents that the foreign language requirement arises out of business necessity. *Information Industries, Inc.*, 88-INA-82 (Feb. 9, 1989). The two-prong business necessity standard of *Information Industries* is applicable to a foreign language requirement. See *Advanced Digital Corp.*, 90-INA-137 (May 21, 1991). The *Information Industries* standard requires that the employer show:

- 1) that the requirement bears a reasonable relationship to the occupation in the context of the employer's business; and
- 2) that the requirement is essential to performing, in a reasonable manner, the job duties as described by the employer.

As the *Information Industries* standard has developed in relation to foreign language requirements, the first prong generally involves whether the employer's business includes clients, co-workers or contractors who speak a foreign language, and what percentage of the employer's business involves this foreign language. The second prong generally focuses on whether the employee's job duties require communicating or reading in a foreign language. See *Coker's Pedigreed Seed Co.*, 88-INA-48 (Apr. 19, 1989) (*en banc*).

Though, we do not agree with the CO that an increase in the Hispanic population along with the fact that other area travel agencies employ Spanish-speaking personnel does not support a business necessity for the foreign language requirement, Employer's rebuttal declaring that the foreign language requirement is essential, is unsatisfactory. *Felician College*, 87-INA-553 (May 12, 1989) (*en banc*); Cf. *Oriental Hotel Group*, 95-INA-496 (Jul. 22, 1997). Stating that it is almost a daily occurrence that someone telephones asking for a Spanish-speaking employee, (AF 34), is not tantamount to a business necessity. As well, a finding of business necessity cannot be based on unsupported assertions made by Employer. See *Lamplighter Travel Tours*, 90-INA-64 (Sept. 10, 1991). Employer attempts to bolster its case by submitting proof of the growth in the local Hispanic community and the number of local Spanish-speaking travel agencies, but evidence that the Spanish-speaking community has expanded is not evidence that Employer's business requires a Spanish-speaking Secretary to expand or continue to prosper. *Simcha Productions*, 93-INA-545 (July 17, 1995). Moreover, Employer has not stated that no other employee in its organization is capable of speaking Spanish. Thus, Employer has failed to show the necessity of having a Spanish-speaking Secretary.

Employer contends that it could not comply with the CO's request to document the number of clients it loses due to its inability to communicate in Spanish, but we feel that the CO's request was reasonable and achievable. See *Oconee Center-Mental Retardation Services*, 88-INA-40 (June 5, 1988). Employer could have tabulated the number of telephone calls it actually receives from potential clients who do not use its services due to the language barrier, submitted bills and correspondence issued to clients with Spanish surnames, and/or surveyed local travel agencies for information detailing the importance of the Hispanic community's patronage and submitting such independent documentation.. See *Raul Garcia, M.D.*, 89-INA-211 (Feb. 4, 1991).

Since the information requested by the CO was reasonable and Employer merely provides a bare assertion which does not establish that the requirement is essential to perform, in a reasonable manner, the duties of a Secretary for the travel agency, Employer has not met the *Information Industries* standard.

Accordingly, we find that Employer has failed to document the business necessity for the foreign language requirement and certification was properly denied.

### **ORDER**

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

SO ORDERED.

Entered at the direction of the panel by:

---

Todd R. Smyth  
Secretary to the Board of  
Alien Labor Certification Appeals

**NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk  
Office of Administrative Law Judges  
Board of Alien Labor Certification Appeals  
800 K Street, N.W.  
Suite 400  
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.